

### **REMARKS**

This is in response to the Office Action of December 30, 2009. Claim 1 is amended to incorporate the features of claims 2 and 3 and 11. No new matter has been added by way of the above-amendment. Claims 2 and 3 and 11 are accordingly cancelled, without prejudice. Claims 1, 4, 6, and 7 are now pending in this application.

#### **Rejections under 35 U.S.C. 112**

Claims 1 and 3 were rejected under the second paragraph of 35 U.S.C. 112 as failing to define the invention properly. Office Action, page 2. Applicants respectfully traverse. The claims as amended to address this ground of rejection, which was based upon alleged lack of antecedent basis for certain terminology in claims 1 and 3. It is respectfully submitted that the claims in their current form satisfy the requirements of the statute. Reconsideration and withdrawal of the rejection are respectfully requested.

#### **Rejection under 35 U.S.C. 103 – claims 1, 4, 6, 7, and 11**

Claims 1, 4, 6, 7, and 11 are rejected as being unpatentable over US 3,733,015 (Marques) in view of US 5,894,962 (Song) and US 4,795,044 (Beck). Office Action, pages 2-5. Inasmuch as this ground of rejection was not applied to claims 2 and 3, both of which are now incorporated into independent claim 1, this ground of rejection does not apply to any of claims 1, 4, 6, and 7 currently pending in the application. As such, this rejection is rendered **moot**.

#### **Rejection under 35 U.S.C. 103 – claim 2**

Claim 2 is rejected as being unpatentable over Marques in view of Song and Beck and US 6,679,403 B2 (Goodall). Office Action, page 5. Inasmuch as this ground of rejection was not applied to claim 3, the feature of which is now incorporated into independent claim 1, this

ground of rejection does not apply to any of claims 1, 4, 6, and 7 currently pending in the application. As such, this rejection is rendered moot.

Rejection under 35 U.S.C. 103 – claim 3

Claim 3 is rejected as being unpatentable over Marques in view of Song and Beck and US 5,505,341 (Gueret). Office Action, pages 5-6. Inasmuch as this ground of rejection was not applied to claim 2, the feature of which is now incorporated into independent claim 1, this ground of rejection does not apply to any of claims 1, 4, 6, and 7 currently pending in the application. As such, this rejection is rendered moot.

Applicant's invention is patentable

Independent claim 1 requires, among other things, that the fixing member is “arranged in the outlet and comprises a once-breakable joint to the upper outer end of the outlet cover, said fixing member extending under the holding tube and being supported by the valve case, and its free end being fork-shaped to partly surround the valve.” As discussed in detail on page 6 of Applicant's specification, the fork-shaped end portion of the fixing member has a double function. On the one hand, the end portion of the fixing member is used to prevent push-down of the valve by means of the diaphragm formed in the upper covering part while the cap is intact. It thus prevents dispensing the liquid from the bottle without removing the fixing member itself from the cap. On the other hand, after it is torn off from the upper covering part, the fixing member can be readily removed from the cap without opening the cap – that is, without removing the upper covering part from the lower mounting part – due to its fork-shaped end portion. This combined function of the fixing member is entirely novel and non-obvious with respect to Marques, Song, Beck, Goodall, and Gueret. Of these, only Beck employs a fixing member in order to allow a user to determine if the dispensing cap was tampered with or previously opened. In Beck, however, the fixing member itself is not intended to physically prevent dispensing. Moreover, since it wholly surrounds the axial spout of the cap, it can be removed from the cap only by removing the upper covering part of the cap from the lower part

thereof. Consequently, the fixing member of Beck has a different function and a different configuration from that herein. A person of ordinary skill in the art would have no reason to change this fixing member to provide the fixing member recited in Applicant's claims.

Independent claim 1 also requires, among other things, that the "the opening elements comprise a valve case belonging to the lower mounting part, and a valve belonging to the upper covering part, wherein the upper covering part is provided with a holding tube surrounding the valve." Thus, another important feature of the present invention is that the valve forms an integral part of the upper covering part, whereas the valve case forms an integral part of the lower mounting part. This configuration is neither disclosed nor suggested in any of the prior art documents relied upon in the rejections of record. Song and Gueret disclose valve assemblies, but in Song, the valve case is not an integral part of the lower mounting part, and in Gueret, the valve is not an integral part of the upper covering part. Therefore, this feature too imparts patentability to the present claims.

#### Contact information

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Richard Gallagher (Reg. No. 28,781) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By  **GARTH M. DAHLEN**  
USPTO #43,575

Marc S. Weiner

Registration No.: 32,181

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Rd

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant